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To: Microsoft ATR
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About the James K. Glassman's quote: "Instead of straightening out its business problems, AOL has decided to spend its time and effort filing lawsuits against tough competitors - a petty, distracting pursuit that won't help AOL or, for that matter, the U.S. economy, which depends on firms like Microsoft for the innovation necessary to bring about a technology revival."

How can such an argument come to the legal field ? There is absolutely no reason why a company can do all it wants, simply because it has a dominating position in the market place. Microsoft has a dominating position, but this CANNOT be an argument that authorizes it to ignore legal constraints that apply to it and all its competitors. If it was the case, then the laws that prevent a company or person to abuse its dominating position in a given area would be senseless.

Fair competition requires that even dominating actors respect the same constraints than its competitors, even when this dominating actor is important or vital for a given economy: the economy is based on the fair competition between actors, whatever their size, nature, or importance. This allows for renewal of the marketplace. And this is also required for the constitutional rights in most democracies that gives the freedom of establishing businesses to every people or company.

The laws that protect consumers or competitors, and allow them to make business in a free but regulated market, act for the long-term safety of the economy: a dominating actor is exposed to the general business-place risks, and may not survive a possible future business-crash, and it is vital for the overall economy that competitors can offer the service previously offered by the dominating actor. And allowing competitors to make business also acts in favor of innovation, by allowing a richer range of alternative products, services and technologies: this is a benefit for the consumer which can determine what he really needs, and which can buy something else that the expensive package what the dominating actor proposes.

All this means that Microsoft, as well as its competitors, must respect all fair business rules, including equilibrated business contracts between it and its consumers, providers or co-branding partners. When an actor has a dominating position, the terms of such business contracts tend to become mostly unequilibrated in favor of the dominating actor, which adds constraints and rules that prevent it from its fair obligation without giving any counterpiece to its co-contractants. This is caused by the fact that these contractants have in fact no real possible choice when signing a business contract with this dominating actor.

In that case, the legal intitution must control the terms of all business

contracts proposed by the dominating actor, and compare it with terms proposed by other competitors, so that unequilibrated terms of such contracts can be declared void by the justice. When a practice becomes too common, the authorities can regulate nationally or internationally to fix a common direction for the justice authorities, and give them legal arguments that can prevent unfair practices.

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